



Montoya, Darlene <dmontoya@nmag.gov>

RE: Request for Policies and Procedures Related to Officer-Involved Shooting and Other Use-of-Force Incidents

4 messages

Montoya, Darlene <dmontoya@nmag.gov>
To: rrodriguez@cityofanthonymn.com

Tue, Jan 17, 2017 at 3:42 PM

Chief Rodriguez:

Attached please find correspondence from the Law Enforcement Academy Board Subcommittee regarding the above-referenced matter. Please forward via email the requested information. If you have any questions or concerns, please do not hesitate to contact me at my direct line below.

Thank you and have a good day. Stay safe.

—— Forwarded message ——

From: <SFXerox@nmag.gov>
Date: Tue, Jan 17, 2017 at 3:21 PM
Subject: Scanned from a Xerox Multifunction Printer
To: "Montoya, Darlene" <dmontoya@nmag.gov>

Please open the attached document. It was scanned and sent to you using a Xerox Multifunction Printer.

Attachment File Type: pdf, Multi-Page

Multifunction Printer Location:
Device Name: XRX9C934E5F4EC2

For more information on Xerox products and solutions, please visit <http://www.xerox.com>

—
Darlene Montoya, Administrator
New Mexico Attorney General's Office
408 Galisteo Street
Santa Fe, New Mexico 87501
[\(505\) 490-4854](tel:5054904854)



Scanned from a Xerox Multifunction Printer.pdf
75K

rrodriguez@cityofanthonymn.com <rrodriguez@cityofanthonymn.com>
To: "Montoya, Darlene" <dmontoya@nmag.gov>

Fri, Jan 27, 2017 at 10:05 AM

Attached please find our Use of Force Policy. Keep in mind this policy has not been reviewed/revised since 6/12/14. As you may be aware I became Chief of Police in November 2016. I am currently in the process of reviewing all

department policies which may or may not need revision. If you have any questions please feel free to contact me. I think it is a great idea that you all are doing this to assist and I hope this will assist you.

Thank you and have a great weekend!!

From: Montoya, Darlene [mailto:dmontoya@nmag.gov]

Sent: Tuesday, January 17, 2017 3:42 PM

To: rrodriguez@cityofanthonym.com

Subject: RE: Request for Policies and Procedures Related to Officer-Involved Shooting and Other Use-of-Force Incidents

[Quoted text hidden]

 **ADMIN 5 USE OF FORCE.docm**
8949K

Montoya, Darlene <dmontoya@nmag.gov>
To: rrodriguez@cityofanthonym.com

Fri, Jan 27, 2017 at 10:21 AM

Thank you so much Chief Rodriguez. All the best to you and your Department. Stay safe.

[Quoted text hidden]

rrodriguez@cityofanthonym.com <rrodriguez@cityofanthonym.com>
To: "Montoya, Darlene" <dmontoya@nmag.gov>

Fri, Jan 27, 2017 at 2:53 PM

You're welcome!!

From: Montoya, Darlene [mailto:dmontoya@nmag.gov]

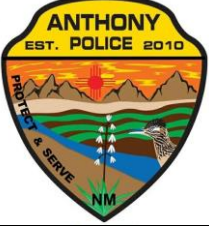
Sent: Friday, January 27, 2017 10:22 AM

To: rrodriguez@cityofanthonym.com

Subject: Re: Request for Policies and Procedures Related to Officer-Involved Shooting and Other Use-of-Force Incidents

[Quoted text hidden]

ANTHONY POLICE DEPARTMENT

	Policy Name: USE OF FORCE Policy# APD 5A NMMLEPSC Standard ADM.05.01-.05.04
Effective Date:	Review Date: 6-12-2014 Revision Date:
<input checked="" type="checkbox"/> Sworn Personnel <input type="checkbox"/> Civilian Personnel <input type="checkbox"/> All Personnel	Authorizing Signature: _____ Chief of Police

I. STATEMENT OF PURPOSE

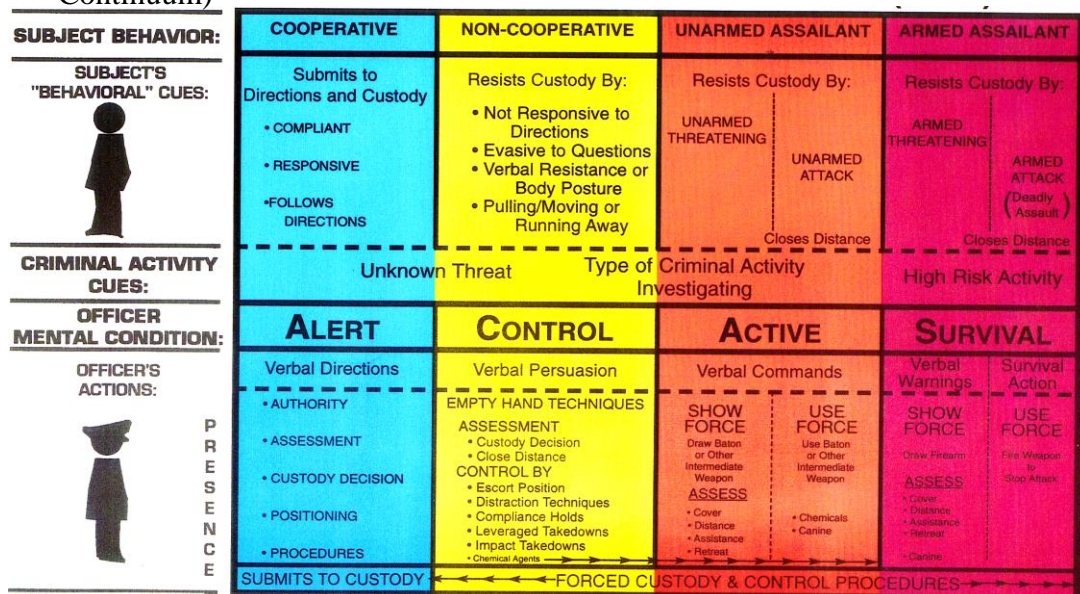
The use of force by a police officer is an extremely sensitive issue and requires careful study and understanding by every officer. This is especially true since the definitions of the use of force by police are based on the determination of reasonableness under the circumstances. Although the careful use of force is authorized by law, the use of unnecessary or unreasonable force is strictly prohibited and will not be tolerated. While clear boundaries of reasonableness can be defined for certain police situations, others must be interpreted for the particular set of circumstances involved. The purpose of this section is to provide each officer with policy guidance and direction with respect to the use of force in carrying out his/her duties.

II. DEFINITIONS

- A. Deadly Force- Force that is intended or known by the person using the force to cause or in the manner of its use or its intended use, is capable of causing death or serious bodily injury.
- B. Reasonable Belief- considered a belief that would be held by a reasonable and prudent law enforcement officer in the same circumstances as the acting person.
- C. Reasonable Force- Use of the reasonable amount of force needed to achieve control over an incident or person.
- D. Serious Bodily Injury- Injury that creates a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of a bodily member or organ.

III. GENERAL POLICY

- A. Reasonable force may be used by an officer in the performance of duties when:
1. It is necessary to preserve the peace, to prevent the commission of an offense or to prevent suicide or self-inflicted injury.
 2. Officer is making lawful arrests and searches, overcoming resistance to such arrests and searches, and preventing escapes from custody.
 3. It is in self-defense or defense of another against unlawful violence to a person or property.
 4. Preventing or interrupting an intrusion on or interference with the lawful possession of property.
- B. An officer may use reasonable force to overcome resistance in the lawful performance of his/her duties, even though there is no immediate or apparent danger calling for self-defense. However, the officer must be acting within the scope of official authority. Every reasonable opportunity to comply must be given to the person being arrested. Force should be used only after all other means have failed to produce compliance.
- C. Before the application of reasonable force, officers should identify themselves as police officers and state their purpose to the offender and others present. This identification is not necessary if the officer reasonably believes his purpose and identity are already known or conditions exist which render it unfeasible to identify.
- D. There is no specific rule fitting all cases as to how much force and means may be used, each case must be decided in the light of its own facts and circumstances. Under no circumstances, will the force used be greater than necessary and in no instance will deadly force be used except as stated in the Deadly Force section of this chapter.
- E. Officers will use only the force necessary to accomplish lawful objectives. Officers must exhaust every reasonable means of employing the least amount of force appropriate to the situation.
- F. The Reactive Control Model (RCM) is taught in the New Mexico Law Enforcement Academy and it is expected to be used by officers of this department in determining the appropriate course of action when interacting with any person(s) in a situation which may require the use of force. (See RCM Continuum)



IV. REPORTING PROCEDURES

A. A written use of force report will be submitted whenever an officer:

1. Discharges a firearm, for any reason other than training or recreational purposes;
2. Takes an action that results in, or is alleged to have resulted in injury or death of another;
3. Applies force through the use of lethal or less-lethal weapons;
4. Has used any equipment in applying force (Tazer, baton, pepper spray, spike system, fire equipment etc.)
5. Utilizes any leveraged takedowns, escort positions, distraction techniques, compliance holds or impact takedowns.

In any incident where a use of force is used, officer(s) shall document the incident in a use of force report. The report will include a detailed description of the events leading to the necessity for the use of force; the amount and type of force used; the nature and extent of injuries, if any, and treatment rendered; the identity of all person(s) involved and any other pertinent information. It will be turned into the immediate supervisor, who will review it and then submit it to the Chief through the proper chain of command.

V. LESS THAN LETHAL

A. USE OF OC (Pepper Spray)

1. OC spray may be used on a suspect who is non-cooperative and is actively resisting the efforts to control him by the following, though not fully inclusive, actions:
 - a. Suspect not responsive to directions;
 - b. Verbal resistance or body posture;
 - c. Pulling/moving, running away or closing distance;
 - d. Aggressive movements and/or an escalation of resistive force.
2. Decontamination
 - a. Decontamination begins after the suspect has been restrained with handcuffs or by other means and the suspect's resistance has ceased.
 - b. Decontamination should begin in a reasonable time frame and officer safety concerns should be taken into consideration.
 - c. Expose suspect to fresh air and attempt to flush affected area with water.

- d. Call medical personnel (EMS) to perform a cursory check of the suspect, to remove any contact lenses, if necessary, and to begin or continue flushing the suspect with water. In the event EMS personnel are not able to assist with decontamination efforts, the suspect will be transported to the emergency room to begin or continue these.
- e. Once the suspect has been transported to the detention facility, the on-duty detention facility personnel shall be notified that the suspect has been sprayed with OC.
- f. Under no circumstances will any creams, salves, or oils be applied to the affected area.

3. Reporting

- a. As with any use of force or application of force, a written report will be submitted detailing the use of the OC spray, decontamination procedures and the events leading to the use of the OC spray.
- b. Anytime the OC spray is used, the approving supervisor will be responsible for ensuring that a copy of the use of force report is forwarded up the chain of command.

B. 12 GAUGE BEAN-BAG (Not Available to Anthony PD at this time)

- 1. Bean-bags are considered to be extended range impact weapons that allow officers to deliver a similar amount of force comparable to batons.
- 2. The bean-bag may be used when other less-lethal force options have been ineffective or when it reasonably appears that such options will be ineffective in subduing the subject. Examples of situations in which the bean-bag may be used include, but are not limited to, the following:
 - a. Dealing with a mentally ill subject who is perceived to be violent;
 - b. Armed subjects;
 - c. Warrant service where the subject is perceived to be violent.
 - d. Violent persons under the influence of drugs and/or alcohol;
 - e. Persons expressing the intent and having the means to commit suicide;
 - f. When deemed the reasonable alternative of lesser force options are likely to be ineffective or greater force options may be inappropriate given objective circumstances.
- 3. Where possible, the bean-bag operator should consult with a supervisor prior to the use.
- 4. The bean-bag should not be pointed at any individual unless the officer involved reasonably believes it will be necessary to use the device.
- 5. The bean-bag will not be used:
 - a. When the operator cannot, for safety or other reasons, approach the subject within effective range of the device;

- b. When it is reasonable to believe that incapacitation of the subject may result in serious injury or death.
 - 6. In less-lethal force situation, when possible, officers should avoid using the bean-bag on:
 - a. Persons in wheelchairs or in control of a vehicle;
 - b. Pregnant women;
 - c. People with known heart problems;
 - d. People with apparent debilitation illness or the elderly;
 - e. Children or those under 80 pounds;
 - 7. Only officers who have successfully completed the agency's approved course of instruction on the bean-bag are authorized to use it in any situation.
 - 8. Officers of this agency shall receive refresher training in the use of the bean-bag on an annual basis during firearms instruction.
- C. ELECTRONIC INCAPACITATION DEVICE – TASER (Not available at this time)
- 1. The TASER is a Conducted Energy Weapon; an electronic incapacitation device. It is an intermediate weapon, which is listed in the force continuum, in the ORANGE. The TASER functions in two ways;
 - a. It uses compressed nitrogen to project two probes a maximum of 21 to 25 feet. An electrical signal is sent to the probes, via small wires, which disrupts the body's ability to communicate messages from the brain to the muscles and causes motor skill dysfunction.
 - b. Acts as a touch stun system when brought into immediate contact with a person's body.
 - 2. The decision to use the TASER is based on the same criteria the Officer uses when selecting to employ O. C. spray, or a baton. The decision must be made dependent on the actions of the subject(s) or the threat facing the Officer(s), and the totality of the circumstances surrounding the incident. In any event, the use of the TASER must be reasonable and necessary.
 - 3. The TASER is not meant to be used in deadly force situations. The TASER must not be used without a firearm back up in those situations where there is a substantial threat towards the Officer(s) or others present.
 - 4. The TASER provides a force option in which the officer does not have to get dangerously close to a threat before deploying the tool.
 - 5. Using the TASER may greatly reduce the need for other types of physical force by the Officer(s) resulting in a serious or potentially deadly injury to the offender, Officer, or others present.
- D. Any use of an electronic incapacitation device (TASER) contrary to the direction of this policy can result in the revocation of the Officer's right to use such product and may subject the Officer to disciplinary action.

E. USE OF A TASER ON VICIOUS ANIMALS

1. The full effect of a TASER on animals is not yet proven. However; field deployments have shown positive results and the TASER has been an effective tool against vicious animals.
 - a. Using the TASER against vicious animals may reduce the need for greater, more injurious force against such animals.
 - b. Personnel should deploy a TASER on an animal when other conventional means to control the animal have been exhausted, or may be unreasonable.
 - c. The use of a TASER on an animal should be based on the attempt to provide a safer, more humane and less traumatic conclusion to the incident.
2. Officers should be prepared to use other means of justified force if necessary, and should use conventional means of animal control if feasible. Conventional means of controlling the animal (e.g.: control sticks, collars, cages) should be on hand, at the scene, if possible, prior to the use of the TASER. Personnel should be prepared to apply conventional controls once the TASER subdues the animal. A TASER may be deployed on an animal when:
 - a. A vicious animal is threatening or attacking a citizen, an Officer, or other animal and the use of other force is not reasonable, or may not be desired given the situation.
 - b. A vicious animal has threatened or attacked a citizen, an Officer, another animal, or has caused a continuing public nuisance and the vicious animal needs to be controlled for reason of public peace or safety, preservation of property, or other legitimate purpose; and the animal poses an active threat to Officers in their efforts to perform their duty.
3. Other sections of this policy that apply to issuance, training/certification, deployment procedures, precautions and duties also apply to this section.
4. Procedures for probe removal should take place as outlined in this policy. Personnel will take reasonable measures to insure the animal's welfare is provided for, in the event that probes impact a sensitive area, or it appears the animal's health is in jeopardy. It is generally understood that as long as personnel acted appropriately, the animal's owner will be responsible for any medical attention needed by the animal.

F. USE OF A TASER ON PERSONS

1. The TASER is not a substitute for deadly force and should not be used in those situations. Deployment of the TASER should be backed up with the availability of lethal force. The TASER may be used in those situations where:

- a. A subject is threatening himself, an Officer or other person with physical force and other means of controlling the subject are unreasonable or could cause injury to the Officer(s), the subject(s) or others.
 - b. Officer/Subject factors indicate the Officer(s), offender(s) or others would be endangered by the use of physical force.
 - c. Other means of lesser or equal force have been ineffective and the threat still exists to the Officer(s), subject(s) and others.
 - d. Center mass of the body should be targeted when firing the TASER. The head and face should not be targeted unless the appropriate level of force can be justified.
2. The TASER shall not be used punitively or for purposes of coercion. It is to be used as a way of averting a potentially injurious or dangerous situation.
 3. The TASER has an effective range of 13 feet, with a fifteen foot cartridge: and 19 feet with a 21 foot cartridge. Ranges under 3 feet may not provide adequate distribution of the probes to allow the unit to function to its full effectiveness. *Firing the TASER at a subject at a range closer than 3 feet is not considered more dangerous to the subject, however.*
 4. Prior to the deployment of a TASER: the person deploying has the responsibility to visually and physically confirm that the tool selected is in fact a TASER and not a firearm. The deploying person should also notify dispatch, if feasible, that a TASER is going to be deployed. The deploying person should also notify any on-scene, assisting officers that they intend to deploy a TASER.
 5. The TASER has the ability to ignite flammable liquids. It will not be deployed at subjects that have come in contact with flammables or in environments where flammables are obviously present. *Personnel should be especially aware of this when in known meth lab environments.*
 6. Proper consideration and care should be taken when deploying the TASER on subjects who are in an elevated position or in other circumstances where a fall may cause substantial injury or death. Officers must be prepared to justify such a deployment.

G. DUTIES AFTER DEPLOYMENT

1. Immediate action should be taken to care for the injured, to apprehend any suspects, and to protect the scene.
2. Once the subject has been restrained or has complied, the TASER should be turned off.
3. A TASER will not be left unattended except in exigent circumstances as when an officer is forced to act alone in taking custody of an immediate threat.
4. Medical personnel will be summoned to the scene to assess the subject. If the exam or other circumstances dictate the subject needs further medical treatment; the subject will be transported to the nearest medical facility. Medical treatment will not be refused for anyone who requests it.
5. Medical personnel will remove probes located in sensitive areas such as the face, neck, groin or breast.

6. Removal of probes in other areas may be done by Officers; at the discretion of the on scene supervisor. Officers will provide first aid following removal of the probes by applying iodine or alcohol wipes, and Band-Aids to the probe sites as needed. Officers should inspect the probes after removal to insure that the entire probe and probe barb has been removed. In the event that a probe or probe barb has broken off is still embedded in a subject's skin; the subject should be provided appropriate medical attention to facilitate the removal of the object.
7. Photographs will be taken of probe impact sites and any other related injuries.
8. Probes that have been removed from skin will be treated as biohazard sharps.
9. Involved personnel will attempt to locate and identify any witnesses to the incident.
10. Officers shall refrain from discussing the incident until the arrival of an on scene supervisor or other administrator. The involved person will brief them of the circumstances surrounding the incident and what action has taken place.
11. After deployment the used cartridge will be placed safely and responsibly into evidence. This will be documented accordingly in all reports.
12. Arrangements for replacement will be made through the supervisor via a memo.
13. All members are required to have two cartridges while on duty.

H. BATONS

1. Batons are to be utilized in accordance with the Reactive Control Module. It may be used when the suspect is threatening, or is actively attacking and is unarmed. This is categorized as ORANGE.
 - a. Following the use of batons officers will take the subject into custody making the scene safe for investigation.
 - b. The subject shall be treated for any injuries.
 - c. Photographs will be taken of the subject and strike areas.
 - d. A use of force form will be written and submitted to the Supervisor through the appropriate chain of command and to the Chief.

VI. DEADLY FORCE

A. Authorized Use of Deadly Force

1. Deadly Force may be used only when the officer reasonably believes that the action is in defense of human life, including the officer's own life, or in the defense of a person in immediate danger of serious bodily injury.
2. Immediate danger may include: A suspect immediately endangering human life or immediately inflicting serious bodily injury upon a person unless apprehended without delay. The officer must reasonably believe that the suspect is armed or has the means to inflict death or serious bodily injury.

- a. Ability (weapon)
- b. Opportunity (distance)
- c. Immediate Jeopardy (Officer's life or someone else's life is in immediate jeopardy)
- d. Fleeing felons (must meet the above requirements)

B. Prohibited uses of deadly force:

1. Officers shall not unreasonably or unnecessarily endanger themselves or the public in the application of deadly force pursuant to this policy or state law. Officers shall not place themselves in a position in order to justify the use of deadly force.
 - a. An officer shall not rely solely on third party reports as a basis for use of Deadly Force, without firsthand knowledge of an alleged offense.
 - b. An officer shall not use deadly force in situations that would not be in accordance with New Mexico State Statutes.
 - c. In an attempt to apprehend fleeing felons or escapees whom are not placing the officer or another person in immediate danger of death or immediate serious bodily injury.

2. All officers will be familiar with all provisions of the New Mexico State Statutes and this directive governing the legal use of Deadly Force.

C. Section 30-2-6. Justifiable homicide by public officer or public employee.

1. Homicide is justifiable when committed by a public officer or public employee or those acting by their command and in their aid and assistance:
 - a. In obedience to any judgment of a competent court;
 - b. When necessarily committed in overcoming actual resistance to the execution of some legal process or to the discharge of any other legal duty;
 - c. When necessarily committed in retaking felons who have been rescued or who have escaped or when necessarily committed in arresting felons fleeing from justice; or
 - d. When necessarily committed in order to prevent the escape of a felon from any place of lawful custody or confinement.
2. For the purposes of this section, homicide is necessarily committed when a public officer or public employee has probable cause to believe he or another is threatened with serious harm or deadly force while performing those lawful duties described in this section. Whenever feasible, a public officer or employee should give warning prior to using deadly force.

History: 1953 Comp., 40A-2-7, enacted by Laws 1963, ch. 303, 2-7; 1989, ch. 222, 1.

D. Section 30-2-8. When homicide is excusable or justifiable defendant to be acquitted.

1. Whenever any person is prosecuted for a homicide, and upon his trial the killing shall be found to have been excusable or justifiable, the jury shall find such person not guilty and he shall be discharged.

History: 1953 Comp., 40A-2-9, enacted by Laws 1963, ch. 303, 2-9.

VII. DUTIES AFTER DEADLY FORCE

A. If deadly force is used:

1. Render the area safe.
2. If suspect is injured:
 - a. Disarm the suspect
 - b. Place the suspect in custody
 - c. Secure the suspect's weapon as evidence.
 - d. Notify the on-duty supervisor immediately.
3. If suspect is killed:
 - a. Secure the scene as it is; do not move the body or the weapon, if in a safe area.
 - b. The officer should keep his weapon with him until it is appropriate to turn it over for evidence purposes.
 - c. Render aid to the injured, request medical personnel.
 - d. The officer shall not leave the scene until replaced by other law enforcement personnel.
 - e. The officer(s) should document the scene as quickly as possible and note any disturbances made by medical personnel.
 - f. The officer shall not investigate the event.

B. Supervisory Duties:

1. Notify appropriate superior officers.
2. Set up perimeter.
3. Assign extra personnel to preserve the scene.
4. Identify witnesses.
5. The officer(s) shall be removed from the scene and transported to the Anthony Police Department or to a medical facility if necessary.
6. A supervisor will accompany the officer and await further instructions from the Chief.
7. Investigators will collect the officer's firearm for evidence.
8. A replacement will be issued as soon as appropriate.
9. No officer shall make a statement to members of the media or the public.

WARNING SHOTS ARE PROHIBITED.

VIII. ADMINISTRATIVE DUTY

- A. Immediately following an officer's involvement in an incident involving serious injury or death. The officer will be automatically placed on administrative duty pending a review by the Chief of Police on the next normal work day, unless the duty status is changed to administrative leave status by the Chief of Police. The officer shall remain in an administrative duty status until such time as the matter is resolved legally and administratively.
- B. Assignment to administrative duty is non-disciplinary with no loss of pay or benefits. This duty is designed to:
 - 1. Address the personal and emotional needs of the officer involved in the use of Deadly Force;
 - 2. To ensure the community that the facts surrounding the case are fully and professionally investigated.
- C. An officer placed on administrative duty will be assigned to office duty in civilian clothes.
- D. The officer may be placed on administrative leave instead of administrative duty at the discretion of the Chief of Police. Assignment to administrative leave is non-disciplinary with no loss of pay or benefits.
- E. An officer on administrative leave shall insure his/her availability to investigators until the investigation has been concluded.
- F. An officer on administrative duty or leave is authorized to carry an approved firearm, unless otherwise directed by the Chief of Police. Officers shall not work off-duty police related jobs and should not enforce laws and make arrests except in emergency situations.
- G. An officer whose action results in a Deadly Force incident will be required to counsel with the Department's appointed counselor. The counselor must make written notification that the officer is fit for duty before the officer returns to full duty.
- H. The Department will make available and reserve the right to require counseling for officers who had involvement in a Deadly Force incident.

IX. INCIDENTS OF FORCE REVIEW

- A. If use of force indicates a possible violation of Anthony PD policy or other inappropriate conduct, the immediate or any other supervisor will refer the matter directly to the Office of the Chief for review.
- B. Referrals to the Office of the Chief will be automatic and take place immediately anytime there is a firearm discharge (except at firing range or in the event of the humane dispatching of an animal.)
- C. The Administrative Staff will:

1. Analyze use of force data on a quarterly, cumulative basis to detect trends;
2. Have compiled in writing and review use of force incidents by officers and types of force used
3. Review the data for the purpose of identifying and acting upon their implications for police and training designed to ensure that officers are using only appropriate types and amounts of force necessary.

X. TRAINING

- A. Annual training will be conducted to instruct officers in the Use of Force Policy. This instruction will be documented.
- B. Copies of this policy will be issued to each officer, before being authorized to carry a weapon and will be updated as needed. This issuance and instruction will be documented.